

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION**

**AGENDA ITEM # III.A.1**

**AGENDA ITEM SUMMARY** In the matter of amendment of rules adopted under the Metal Mine Reclamation Act.

**LIST OF AFFECTED RULES** This request to initiate rulemaking would amend ARM 17.24.101, 102, 103, 104, 105, 106, 115, 116, 117, 118, 119, 140, 146, 167, and 184.

**AFFECTED PARTIES** The proposed rule amendments potentially affect all persons who are licensed to conduct exploration activities or permitted to conduct mine and mill operations under the Metal Mine Reclamation Act.

**SCOPE OF PROPOSED PROCEEDING** The action undertaken by the Board is the review and potential adoption of significant amendments to the Administrative Rules of Montana that relate to the Environmental Management Bureau.

**BACKGROUND** In the 2000 Legislative Session, the Metal Mine Reclamation Act was amended (1) to increase application and renewal fees for exploration licenses and operating permits; (2) to allow for bond forfeiture in the event that a permittee or licensee causes an imminent danger to public health, safety or the environment and fails to abate the danger; (3) to require bonding to be set in an amount that assures compliance with the Air and Water Quality Acts in addition to the Metal Mine Reclamation Act, rules adopted under the Metal Mine Reclamation Act, and the approved operating permit; and (4) to establish an environmental rehabilitation and response account in the state special revenue fund for deposit of all fees, fines and penalties paid under the Act. Rule amendments have been proposed to reflect these statutory changes.

Proposed rule amendments reorganize information required in reclamation plans and operating permit applications. Under the present rule, a reclamation plan is required to contain information that, while necessary to evaluate a permit application, does not directly address reclamation. These requirements are transferred to the rule addressing operating permit application requirements. The proposed amendments require additional information to be included in a reclamation plan regarding the removal of facilities and structures and the implementation of postmine environmental monitoring programs. This information is required to assure reclamation to the approved post-mine land use and to assure long-term compliance with air and water quality standards. Finally, the operating permit application requirements have been expanded to include information that the Department has historically required. Providing advance notice of these requirements is designed to streamline the permit application process.

Proposed rule amendments on bonding ensure that the Department has the full bonding authority contemplated by statute. Another proposed amendment on bonding allows the Department full use of a bond even if some of the specific reclamation tasks may be performed at a lower cost than that set forth in the bond calculation. The amendment takes into consideration the fact that the bond calculation is only an estimate and that the actual cost of the line-items may be lower or higher. Finally, a proposed amendment allows the Department to forfeit a letter of credit in the event that the permittee fails to abate an imminent danger.

Other proposed rule amendments provide that, as a permit condition, a permittee is required to conduct operations consistent with written commitments made during the permit and environmental reviews and reclamation bond calculation process. Frequently, an applicant for an operating permit makes written commitments to cure deficiencies noted by the Department in its review of the permit application or subsequent amendments. An applicant may also mutually agree on mitigation measures during the environmental review process. Finally, the reclamation plan usually gains detail during the reclamation bond calculation. The Department relies on these written commitments, mitigation measures and reclamation details in approving the permit or amendment. The applicant, however, may fail to submit replacement pages to reflect these additional commitments for insertion into the permit. These amendments would make the written commitments, mitigation measures and reclamation plan details enforceable notwithstanding the failure to physically update the permit. Along the same lines, a proposed amendment expressly indicates that the phrase "plan of operations" includes operating, monitoring and contingency plans to emphasize that the monitoring and contingency plans are enforceable provisions of the permit.

Additional proposed rule amendments delete current provisions that are repetitive. Finally, rule amendments are also proposed for clarification, consistency or readability purposes. These proposed rule amendments do not make substantive changes.

**HEARING INFORMATION** Since the substantive changes have been made at the request of the Department, the Department believes that it is appropriate for the Board to appoint a hearing officer to conduct the hearing.

**BOARD OPTIONS** The Board may:

1. authorize the Department to initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules,
2. modify the Notice of Proposed Amendment of Rule and initiate rulemaking thereafter;

or

3. refuse to amend the rule and deny the Department's request to initiate rulemaking.

**DEQ RECOMMENDATION** The Department recommends that the Board grant the Department's request to initiate rulemaking, schedule a hearing, and appoint a hearing officer.

**ENCLOSURES** The following information is attached to this summary

1. Draft notice of proposed rulemaking.